IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 814 of 2006

In

SPECIAL CIVIL APPLICATION No. 10760 of 2006

with

CIVIL APPLICATION No. 6314 of 2006

For Approval and Signature:

HONOURABLE THE ACTING CHIEF JUSTICE Y.R.MEENA

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HEMANT AUTOMOBILES PVT LTD & 4 - Appellant(s)
Versus
UNION BANK OF INDIA - Respondent(s)

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Appearance :
MR BR GUPTA for Appellant(s) : 1 - 5.
MS NALINI S LODHA for Respondent(s) : 1,

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CORAM : HONOURABLE THE ACTING CHIEF JUSTICE Y.R.MEENA

and

HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 17/06/2006

ORAL JUDGMENT

In this appeal the short controversy raised before us is whether learned Single Judge has rightly dismissed the writ petition of the appellants on the ground that there is alternative remedy of appeal available under Section 17 of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Act, 2002 (hereinafter referred to as 'the Securitization Act').

Learned counsel for the appellants submits that they have no alternative remedy of filing appeal before the Debt Recovery Tribunal, as the possession of the property has not been taken so far by the creditors. He placed reliance on the decision of Their Lordships in Mardia Chemicals Ltd. and ors. Vs. Union of India – (2004) 4 SCC 311.

The admitted facts are that a notice under sub-section (2) of Section 13 of the Securitisation Act was issued to the appellants on 11th August, 2004 and they were called upon to pay outstanding amount of Rs. 1,56,35,179.85 with interest, within a period of 60 days from the date of receipt of the notice. Inspite of receiving the notice on 13.8.2004, the said amount was not paid by the appellants.

It appears from the record that by letter dated 10.1.2005,

appellants expressed an inclination to pay Rs. 21.50 lacs against release of one of the property, namely Shop No.1 and 2 in Shreeji Tower, Drive-in-Road. However, the offer being too low, respondent Bank rejected the proposal. Again a notice was issued on 15.12.2005, but no payment was made.

Thereafter, notices were issued on 25.4.2006 and 29.4.2006, asking the appellants to discharge their liability in full. It was also made clear to the appellants that now the Bank will have no option but to take steps for enforcement of securities by taking possession and selling the securities for realising the bank dues as provided under the Securitisation Act.

The petitioners – appellants have challenged these notices by filing the writ petition. The learned Single Judge while considering the factual aspects, finally held that an alternative remedy is available by way of appeal against the demand-cum-possession notices so issued under sub-section (4) of Section 13 of the Securitisation Act, and the writ petition was not maintainable.

Mr. Gupta, learned counsel for the appellants submits that the appeal before the Tribunal can be filed only after the creditor takes away possession of the secured properties. In this case, no possession has so far been taken by the creditors and therefore, appeal before the Debt Recovery Tribunal is not maintainable and hence, writ petition was required to be entertained. He further submits that before proceeding further to take possession of the residential house, the respondent Bank should follow the procedure laid down in Civil Procedure Code.

Learned Counsel for the respondent Bank submits that after issuance of notices under sub-section (2) of Section 13 of the Securitisation Act, when the appellants have failed to discharge their liability, being a secured creditor Bank can take possession of the property straight-away under sub-section (4) of Section 13 of the Securitisation Act. She further brought to our notice that even after issuance of the notice under sub-section (2) of Section 13 of the Securitisation Act, the appellants have sold one of the property secured i.e. a shop, and the person to whom the property has been sold is in possession of the same. She submits that a statement of the said buyer has been recorded, who has admitted in his statement that he has paid Rs. 26 lakhs towards purchase value. To this Mr. Gupta states that the appellants have received only Rs. 1 lakh from the said buyer so far.

There is no dispute on the fact that notice under sub-section (2) of Section 13 has been issued and the appellants were required to discharge their liability within 60 days, but they failed to do so. The appellants made representation for settlement, but offered a too meagre amount against the huge outstanding dues and therefore, the same was rejected by the Bank. Now a letter has also been addressed to the appellants on 29.4.2006 stating that they are entitled to take possession of the property secured.

Assuming that unless the possession is taken by the creditors, there is no alternative remedy available, but on the given facts, inspite of notice under sub-section (2) of Section 13 of the Securitisation Act, the appellants failed to discharge their liability by paying outstanding dues. It is significant to note that Section 35 of the Securitisation Act has an

over-riding effect to all other laws. Therefore, the provisions of this Act will prevail over other laws so far as recovery of the debt and possession of the property is concerned.

Sub-section (4) of Section 13 of the Securitisation Act provides that in case the borrower fails to discharge his liability in full within the period specified in sub-section (2), it will be open to the secured creditor to take possession of the secured assets of the borrower, including the right to transfer by way of lease, assignment or sale for realising the secured asset. It is also pertinent to note that after notice under sub-section (2) of Section 13 of the Securitisation Act, the borrower has sold one of the secured property to a third party without prior permission of the creditor or the Court.

Considering this aspect and the background that when there is a provision for taking possession of the secured property by secured creditor under the Securitisation Act in case the borrower fails to discharge his liability, the creditor Bank can take steps under sub-section (4) of Section 13 of the Act, which includes possession of the secured assets i.e. residential house and other secured assets of the appellant. In these facts, no relief can be granted to the appellant under Article 226 of the Constitution of India.

No case is made out for interference in this appeal. Whether the property is a residential premises or any other type of property does not make any difference for this purpose of steps taken under sub-section (4) of Section 13 of the Securitisation Act.

The appeal stands dismissed.

Civil Application also stands disposed of.

(Y.R. Meena, Actg.C.J.)

(D.A. Mehta, J.)

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